

Serial No. 10/542,399
Amendment Dated October 10, 2007
Responsive to Office Action dated January 16, 2008

REMARKS/ARGUMENTS

Claims 1-19 are pending and withdrawn.

Claims 1-19 were previously rejected under 35 U.S.C. 102(b) as being anticipated by Haber (US 4,103,773). Now they are withdrawn from further examination and the Office Action was made final. The restriction is traversed for the same reasons set forth in the request for reconsideration and in the petition.

The claimed invention is the SAME species of invention as originally claimed since both the subject matter of the original claims (hopper-tray combination) and the subject matter of the present claims (hopper-tray-containing stacked golf balls) are in technical art class 206. The Examiner erroneously contends that the hopper-tray combination is in technical art class 211, which pertains to built-up open framework structures that have nothing to do with the claimed invention. Even the Haber patent that is relied upon to reject the claims is in class 206, not 211.

For the same reasons mentioned in the last request for reconsideration and in the petition, it is requested that both the restriction requirement and finality designation be withdrawn.

Haber shows a container containing layers of pool balls with each layer separately supported upon a respective tray surface. In contrast, claim 1 calls for neighboring layers of the golf balls to contact each other, which is not the situation with the layers of pool balls of Haber.

As a consequence of such contact and from the hopper-tray accommodating them, the entire hopper-tray assembly of the claimed invention may be flipped over without the golf balls dislodging from their positions. As a result, the weight

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remains balanced inside, which is not the case if the Haber assembly is flipped over since its pool balls are free to dislodge from their positions and thus causing the assembly to topple when flipped due to an unbalanced internal weight arrangement.

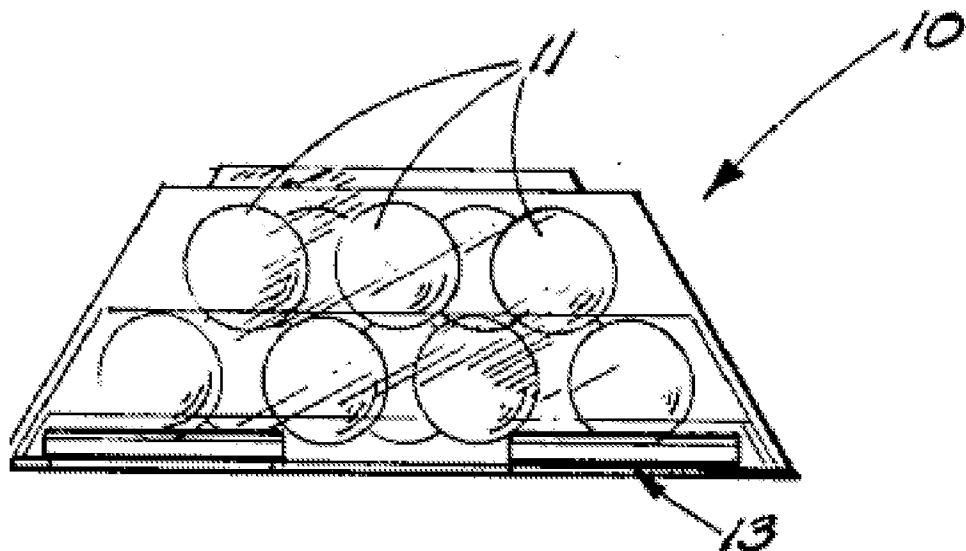
Further, what is positively claimed in claim 1 is the structural limitation of

the hopper and tray being further configured to keep the golf balls stacked in the truncated pyramidal shape

Haber's pool balls are layered, but not stacked on each other and thus does not meet the claim language. Each layer is separately supported.

Haber's hopper 22 plays no role in keeping even pool balls stacked as figures 2 and 4 of Haber reveal. This is because none of the pool balls actually contact the interior wall of Haber's hopper 22. Indeed, it is the intermediary tray 18 of Haber that has openings to accommodate pool balls, not the hopper.

Consider Fig. 2 of Haber, which sholws its holes 17, 21 supporting pool balls.



One cannot equate elements 17 and 21 of Haber as "dimples" with a curvature as recited in claims 8 and 9. Such is contrary to dictionary definitions for "dimple", as well as how they appear in the application drawings. A "dimple" is defined by dictionary definition as a slight depression or indentation in a surface. Haber's holes 17 and 21 are not slight depressions or indentations, but rather through going holes. Therefore, anticipation is not made out.

Claim 14 recites that the curvature be concave or convex. The holes 17, 21 of Haber are circles without convex or concave curvature.

Claim 12 recites that the spacer insert be within the interior cavity. The hopper and tray define such an internal cavity. The sidewalls of the hopper 22 and tray 14 are not properly equated with the spacer insert.

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In contrast, the sidewall of the tray 14 of Haber slopes downward and outward in Fig. 3 of Haber and thus cannot be within the internal cavity defined by the tray and hopper. The only thing that fits between the sidewalls of the hopper 22 and tray 14 is the lower portion of the sidewall of the intermediary tray 18, but certainly not pool balls or golf balls that claim 1 recites is accommodated in the internal cavity.

In further contrast, the sidewall of the hopper 22 defines the internal cavity and thus is not within the internal cavity as would be required according to the recitation of claim 12. Neither claims 12 nor 13 are anticipated. Claim 13 recites that the spacer has a lid, which is not met by 24 of Haber.

As concerns claim 2, there are no complementary configurations on the top and bottom trays of Haber.

Claim 3 calls for the hopper and tray to have retainers that engage each other, yet the hopper and tray are recited in claim 1 as stably supporting the golf balls that are stacked. In contrast, the top tray of Haber plays no role in stably supporting pool balls and the intermediate tray of Haber lacks retainers that are to engage with counterparts in the base tray. In effect, the present invention performs with just two pieces (hopper and tray), which Haber tries to accomplish with three pieces (bottom, intermediate and top trays).

As concerns claim 4, Haber lacks complementary indentations and configurations suited to complement each other.

As concerns claim 5, bringing the intermediate and bottom trays together do not cause the fasteners of the top and bottom trays to slide against each other in Haber.

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As concerns claim 6, Haber provides for an elongated tongue 31 passing through a slot 30 to form an effective hinge between the top and bottom trays, but, contrary to the recitation of claim 1, the top tray of Haber plays no role in stably supporting ball stacks within. Such is done by the bottom and intermediate layers of Haber, but he intermediate layer lacks any hinge component.

As concerns claim 7, Haber's effective hinge arrangement may enable swinging about it, but there is no spring bias imposed upon the hinge.

As concerns claim 10, nothing in Haber suggests that one might stably stack duplicate combination packages one atop the other in the closed position without toppling. Further, Haber lacks complementary indentations and configurations.

As concerns claim 11, Haber lacks an indentation for its bottom tray that complements a configuration on the top tray.

As concerns claim 14, not only does Haber lack dimples, but there is no mention that in Haber such dimples have a concave or convex curvature.

Claim 17 recites the orientation of sidewalls, which are evident in the drawings. Haber's pool ball packaging device has three parts: a bottom tray 14 with downwardly depending sidewalls 15 (col. 2 lines 25-26), an intermediate tray 18 having downwardly depending sidewalls 19 (col. 2 lines 33-34), and a top tray 22 having downwardly depending sidewalls 23 (col. 2 lines 41-43). The bottom and intermediate trays 14, 18 have respective series of openings 17, 21 to hold individual ones of the pool balls.

In contrast, claim 17 recites that the hopper and tray each have sidewalls that terminate in peripheries and that the sidewalls engage each other at a location spatially between the two parallel planes (in which lie the respective surfaces of

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central regions of the hopper and tray). Fig. 3 of Haber, however, shows the mouth of each of the trays nested one within the other at the base level, as seen in Fig. 2. Thus, rather than joining each other at a location spaced intermediate from parallel planes that extend through top and bottom surfaces of the assembly, they are in alignment with the bottom plane.

Such an arrangement in Haber for instance, does not lend it self to a clamshell type packaging construction, such as is recited in claim 18.

Finally, it is noted that since Haber constitutes non-analogous art (pool balls packaging), it may not be properly modified by any prior art to justify a 103 rejection in view of stacked golf balls. Haber was not designed to address any golf ball storage problem comparable to that faced by the present invention. Indeed, the pool balls themselves in Haber are not envisioned to touch each other when balls are individually placed in appropriate openings as is clear from Fig. 4 of Haber. There is no stable stacking of pool balls in Haber without making provision for its intermediate tray, which intermediate tray is not needed in the present invention.

Withdrawal of the final Office Action is earnestly solicited.

Respectfully submitted,



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